

EDMUND G. BROWN JR., Attorney General
of the State of California
SUSAN FITZGERALD, State Bar No. 112278
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2066
Facsimile: (619) 645-2061

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation
and Accusation Against:

RICHARD ANTHONY SPRAGUE, R.C.P.
6153 Horton Drive
La Mesa, CA 91942

Respiratory Care Practitioner License
No. 19625

Respondent.

Case No. D1-2007-480

**PETITION TO REVOKE
PROBATION AND ACCUSATION**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation and Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board, Department of Consumer Affairs (RCB).

2. On or about September 2, 1997, the RCB issued Respiratory Care Practitioner License No. 19625 to Richard Anthony Sprague (Respondent). The license was in effect at all times relevant to the charges brought herein, and will expire on August 31, 2009, unless renewed.

3. In a disciplinary action entitled "In the Matter of the Accusation Against Richard Anthony Sprague, R.C.P.," Case No. 1H-2007-480, the RCB issued a decision, effective

October 6, 2008, in which Respondent's license was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of two (2) years with probationary conditions. A copy of that decision is attached as Exhibit A and is incorporated here by reference.

JURISDICTION

4. This Petition to Revoke Probation and Accusation is brought before the RCB under the authority of the following sections of the California Business & Professions Code:

A. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

B. Section 3750.5 of the Code states in pertinent part as follows:

"In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or licenseholder who has done any of the following:

"

"(b) Used any controlled substance as defined in Division 10 (commencing with Section 11100) of the Health and Safety Code, or any dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9.

""

5. This Petition to Revoke Probation and Accusation is also brought before the Board under the authority of the Board's decision in case number 1H-2007-480, which provides in pertinent part as follows:

"IT IS HEREBY ORDERED that Respiratory Care Practitioner License No. 19625 issued to Respondent Richard Anthony Sprague, R.C.P. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for two (2) years on the following terms and conditions:

"

"18. **VIOLATION OF PROBATION**

If Respondent violates any term of the probation in any respect, the Board, after

1 giving Respondent notice and the opportunity to be heard, may revoke probation and
2 carry out the disciplinary order that was stayed. If a petition to revoke probation is filed
3 against Respondent during probation, the Board shall have continuing jurisdiction and the
4 period of probation shall be extended until the matter is final. No petition for
5 modification of penalty shall be considered while there is an accusation or petition to
6 revoke probation or other penalty pending against Respondent.

7 “. . . .”

8 DRUGS

9 6. Marijuana is a Schedule I controlled substance, pursuant to Health and Safety
10 Code section 11054(d)(13).

11 CHARGES AND ALLEGATIONS RE THE PETITION TO REVOKE PROBATION

12 FIRST CAUSE TO REVOKE PROBATION

13 (Failure to Comply with Biological Fluid Testing)

14 7. At all times after the effective date of Respondent’s probation, Probation
15 Condition 3 required that Respondent comply with random biological fluid testing.

16 8. Probation Condition #3 provides as follows:

17 BIOLOGICAL FLUID TESTING

18 Respondent, at his expense, shall participate in random testing, including, but not
19 limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle
20 testing, or a drug screening program approved by the Board. Test costs range from
\$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The
frequency and location of testing will be determined by the Board.

21 At all times, Respondent shall fully cooperate with the Board or any of its
22 submit to such tests and samples for the detection of alcohol, narcotics, hypnotics,
dangerous drugs or other controlled substances.

23 If Respondent is unable to provide a specimen in a reasonable amount of time
24 from the request, while at the work site, Respondent understands that any Board
representative may request from the supervisor, manager or director on duty to observe
Respondent in a manner that does not interrupt or jeopardize patient care in any manner
until such time Respondent provides a specimen acceptable to the Board.

25 Failure to submit to testing or appear as requested by any Board representative for
26 testing, as directed shall constitute a violation of probation and shall result in the filing of
an accusation and/or a petition to revoke probation against Respondent’s respiratory care
27 practitioner license.

28 9. The facts and circumstances regarding the violation of Probation Condition #3 are

as follows:

A. On November 26, 2008, Respondent was required to provide a urine sample for testing that day. He failed to do so.

B. On December 23, 2008, Respondent was required to provide a urine sample for testing that day. He failed to do so.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Abstain From Any and All Mood Altering Substances)

10. At all times after the effective date of Respondent's probation, Probation Condition 4 required that Respondent abstain from any and all mood altering substances, absent a legitimate medical prescription.

11. Probation Condition #4 provides as follows:

ABSTENTION FROM USE OF ANY AND ALL MOOD ALTERING SUBSTANCES

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs, and any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professionals as requested by the Board.

Respondent shall ensure that he is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s).

Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Respondent also understands and agrees that any positive result that registers over the established laboratory cutoff level shall be reported to each of Respondent's employers.

12. The facts and circumstances regarding the violation of Probation Condition #4 are as follows:

A. On November 28, 2008, Respondent's urine tested positive for cannabinoids¹;

B. On December 24, 2008, Respondent's urine tested positive for cannabinoids.

C. On January 9, 2009, Respondent's urine tested positive for cannabinoids.

1. Cannabinoids are indicators of marijuana use.

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2 THIRD CAUSE TO REVOKE PROBATION

3 (Failure to Assure Filing of Supervisor Quarterly Report)

4 13. At all times after the effective date of Respondent's probation, Condition 6
5 required Respondent to ensure that his supervisor filed quarterly reports with the Board.

6 14. Probation Condition #6 provides as follows:

7 SUPERVISOR QUARTERLY REPORTS

8 Supervisor Quarterly Reports of Performance are due for each year of probation
9 and the entire length of probation from each employer, as follows:

10 For the period covering January 1st through March 31st, reports are to be
11 completed and submitted between April 1st and April 7th. For the period covering April
12 1st through June 30th, reports are to be completed and submitted between July 1st and July
13 7th. For the period covering July 1st through September 30th, reports are to be completed
14 and submitted between October 1st and October 7th. For the period covering October 1st
15 through December 31st, reports are to be completed and submitted between January 1st
16 and January 7th.

17 Respondent is ultimately responsible for ensuring his employer(s) submits
18 complete and timely reports. Failure to ensure each employer submits complete and
19 timely reports shall constitute a violation of probation.

20 15. The facts and circumstances regarding the violation of Probation Condition #6 are
21 that a supervisor report was due to the Board between January 1 and January 7, 2009 and has not
22 been received.

23 FOURTH CASE TO REVOKE PROBATION

24 (Failure to Comply with Probation Monitoring Costs)

25 16. At all times after the effective date of Respondent's probation, Condition #10
26 required Respondent to pay the costs of probation monitoring by the Board.

27 17. Probation Condition #10 provides as follows:

28 PROBATION MONITORING COSTS

All costs incurred for probation monitoring during the entire probation shall be
paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or
increased. Respondent's failure to comply with all terms and conditions may also cause
this amount to be increased.

All payments for costs are to be sent directly to the Respiratory Care Board and
must be received by the date(s) specified. (Periods of tolling will not toll the probation
monitoring costs incurred.)

instead If Respondent is unable to submit costs for any month, he shall be required
to submit an explanation of why he is unable to submit the costs, and the date(s)

1 he will be able to submit the costs including payment amount(s). Supporting
documentation and evidence of why the Respondent is unable to make such payment(s) must
2 accompany this submission.

3 Respondent understands that failure to submit costs timely is a violation of
probation and submission of evidence demonstrating financial hardship does not preclude
4 the Board from pursuing further disciplinary action. However, Respondent understands
providing evidence and supporting documentation of financial hardship may delay
further disciplinary action.

5 In addition to any other disciplinary action taken by the Board, an unrestricted
license will not be issued at the end of the probationary period and the respiratory care
6 practitioner license will not be renewed, until such time all probation monitoring costs
have been paid.

7 The filing of bankruptcy by Respondent shall not relieve the Respondent of his
responsibility to reimburse the Board for costs incurred.

8
9 18. The facts and circumstances regarding the violation of Probation Condition #10
are as follows:

10 A. Payment of \$86.00 was due on January 6, 2009 and has not been received;

11 B. Payment of \$100.00 was due on February 6, 2009 and has not been received;

12 C. Respondent has not submitted any written explanation and evidence as to why he
13 has not/cannot make monitoring costs payments.

14 FIFTH CAUSE TO REVOKE PROBATION

15 (Failure to Comply with Cost Recovery)

16
17 19. At all times after the effective date of Respondent's probation, Condition #15
required Respondent to pay cost recovery to the Board.

18 20. Probation Condition #15 provides as follows:

19 COST RECOVERY

20 Respondent shall pay to the Board a sum not to exceed the costs of the
21 investigation and prosecution of this case. That sum shall be \$1,698.50, and shall be paid
in full directly to the Board, in equal quarterly payments, within 12 months from the
22 effective date of this decision. Cost recovery will not be tolled.

23 If Respondent is unable to submit costs timely, he shall be required instead to
submit an explanation of why he is unable to submit these costs in part or in entirety, and
24 the date(s) he will be able to submit the costs including payment amount(s). Supporting
documentation and evidence of why the Respondent is unable to make such payment(s)
must accompany this submission.

25 Respondent understands that failure to submit costs timely is a violation of
probation, and submission of evidence demonstrating financial hardship does not
26 preclude the Board from pursuing further disciplinary action. However, Respondent
understands that providing evidence and supporting documentation of financial hardship
27 may delay further disciplinary action.

28 Consideration to financial hardship will not be given should Respondent violate
this term and condition, unless an unexpected AND unavoidable hardship is established

1 from the date of this order to the date payment(s) is due.

2 ///

3 The filing of bankruptcy by the Respondent shall not relieve the Respondent of
4 his responsibility to reimburse the Board for these costs.

5 21. The facts and circumstances regarding the violation of Probation Condition #15
6 are as follows:

7 A. \$424.63 in payment was due on January 6, 2009 and has not been received;

8 B. Respondent has not submitted any written explanation and evidence as to why he
9 has not/cannot make cost recovery payments.

10 SIXTH CAUSE TO REVOKE PROBATION

11 (Failure to File Quarterly Report)

12 22. At all times after the effective date of Respondent's probation, Condition #8
13 required Respondent to file quarterly reports with the Board.

14 23. Probation Condition #8 provides as follows:

15 QUARTERLY REPORTS

16 Respondent shall file quarterly reports of compliance under penalty of perjury, on
17 forms to be provided to the probation monitor assigned by the Board. Omission or
18 falsification in any manner of any information on these reports shall constitute a violation
19 of probation and shall result in the filing of an accusation and/or a petition to revoke
20 probation against Respondent's respiratory care practitioner license.

21 Quarterly report forms will be provided by the Board. Respondent is responsible
22 for contacting the Board to obtain additional forms if needed. Quarterly reports are due
23 for each year of probation and the entire length of probation as follows:

24 For the period covering January 1st through March 31st, reports are to be
25 completed and submitted between April 1st and April 7th. For the period covering April 1st
26 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For
27 the period covering July 1st through September 30th, reports are to be completed and submitted
28 between October 1st and October 7th. For the period covering October 1st through December 31st,
reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of
probation.

24 24. The facts and circumstances concerning the violation of Probation Condition #8
25 are that Respondent failed to file a quarterly report due between January 1 and 7, 2009.

26 CHARGES RELATED TO THE ACCUSATION

27 (Use of a Controlled Substance - Violation of Code section 3750.5(b))

28 25. Respondent's license is subject to discipline, pursuant to Code section 3718 in

1 conjunction with Code section 3750.5(b) in that he used marijuana, a Schedule I controlled
2 substance, in November and December of 2008 and January of 2009, as reflected by drug test
3 results positive for cannabinoids on November 28, 2008, December 24, 2008, and January 9,
4 2009.

5 **PRAYER**

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein
7 alleged, and that following the hearing, the Respiratory Care Board of California issue a
8 decision:

9 1. Revoking the probation that was granted by the Board in Case No. 1H-2007-480
10 and imposing the disciplinary order that was stayed, thereby revoking outright Respiratory Care
11 Practitioner License No. 19625 issued to Richard Anthony Sprague;

12 2. Revoking or suspending Respiratory Care Practitioner License No. 19625 issued
13 to Richard Anthony Sprague;

14 3. Ordering Richard Anthony Sprague to pay the Respiratory Care Board the costs
15 of investigation and enforcement of this case, and if probation is continued or extended, the costs
16 of probation monitoring;

17 4. Taking such other and further action as deemed necessary and proper.

18
19 DATED: February 26, 2009.

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21 Original signed by Liane Zimmerman for:
22 STEPHANIE NUNEZ
23 Executive Officer
24 Respiratory Care Board of California
25 Department of Consumer Affairs
26 State of California
27 Complainant
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